relevant time, that is to say, at the time judgment is pronounced in the court below. In my opinion, regard being had to the provisions of s 28(4)(a), the appropriate order to make is that the defendant be chargeable with double the market rental value of the premises, which in this case would be $109 pm, from the date of expiry of the notice to quit, which would be 1 July 1979 to the date when possession is handed over to the plaintiff. However, as this sum would be well in excess of the jurisdiction of the magistrates' court, I would add a rider that the damages payable be limited to the jurisdiction of that court.

Turning to costs, the learned magistrate, as I have already noted, gave no reason for denying the plaintiff the costs of the action. There was nothing to suggest that the plaintiff had misconducted himself and indeed counsel for the defendant did not allege anything of the sort. In the circumstances, I feel justified in intervening on this issue though it involves an element of discretion as there is no reason why the usual rule that costs should follow the event should not apply. I accordingly order that the defendant must pay to the plaintiff the costs both here and in the court below. The result therefore is that the appeal is dismissed while the cross-appeal is allowed with the consequential orders aforesaid.

Order accordingly.

Solicitors: *Shan & Gooi; Sykt Abu Haniffa.*

Reported by *PS Ranjan*

Syarikat Jaya v Star Publications (M) Bhd

HIGH COURT (PENANG) — CIVIL SUIT NO 283 OF 1975
EDGAR JOSEPH JR J
2 AUGUST 1989

Contract — Termination — Duration of contract not specified — Notice of termination served — Period for which contract was to run — Reasonable notice of termination — Measure of damages — Assessment of damages — Contracts Act 1950, s 159

Agency — Agreement — Termination — Duration not specified — Period for which contract was to run — Required period of notice of termination — Reasonable notice — Measure of damages — Assessment of damages — Contracts Act 1950, s 159

Civil Procedure — Cause of action — Whether cause of action existed at date of issue of writ — Statement of claim not stating that damages claimed for breach of contract — General not special damages pleaded

Words and Phrases — 'Cause of action'

By two agreements in writing dated 3 March 1971 ('the March agreements'), the defendants appointed the plaintiffs sole agents for the sale of certain newspapers of which the defendants were the proprietors and publishers. The agreements were each for a period of three years but terminable after the first year upon, inter alia, three months' notice in writing. The March agreements were, by mutual consent, cancelled and replaced by two further agreements dated 1 September 1971 ('the September agreements') in pari materia with the March agreements, except that they were for an unspecified period and did not provide for termination by notice. In a letter dated 26 April 1975 to the plaintiffs, the defendants' solicitors asserted that the sole agency contract under the March agreements had expired by effluxion of time on 3 March 1974 but offered to continue the sole agency on a year to year basis. The plaintiffs, by letter of 2 May 1975, declined the offer and expressed the hope that the dealings under the existing agreements would continue. The defendants' solicitors replied, by letter of 31 May 1975, that it was not their client's intention to renew the agency agreement which had expired but, that their client would continue to supply the newspapers concerned until 30 June 1975. By a further letter dated 30 August 1975, the defendants' solicitors gave formal notice to the plaintiffs that the March agreements would be terminated within three months thereof. The plaintiffs issued a writ claiming an injunction restraining the defendants from discontinuing the supply of newspapers under the September agreements, damages for breach of contract and interest thereon.

The defendants contended that the September agreements, though for an indefinite duration, were impliedly subject to termination by reasonable notice, which had in fact been given. The defendants also raised the following points: (a) that the plaintiffs had no cause of action at the date of issue of the writ, the sole agency agreement having then not yet been determined; (b) that the statement of claim had failed to set out that a claim was being made for damages for breach of contract; and (c) that the termination was lawful as it was because of the plaintiffs' refusal to enter into fresh agreements with the defendants that the defendants gave notice of termination. The following questions arose for decision: (a) what was the period for which the sole agency agreement was to run; (b) what was the required period

of notice of termination for the September agreements; and (c) the measure of damages to which the plaintiffs are entitled.

Held, allowing the plaintiffs' claim:

(1) The plaintiffs had a cause of action at the date of issue of the writ, the letter dated 30 August 1975 being only a formal notice of termination confirming the earlier repudiation of the contract by the defendants' letters of 26 April 1975 and 31 May 1975.

(2) The statement of claim was acceptable since it was obvious upon a perusal that the plaintiffs' claim was for damages for breach of the sole agency agreement and further, the defendants were not put to any disadvantage at the trial by the same.

(3) On the evidence adduced, the plaintiffs had considerable justification for refusing to enter into the year to year agreements proposed by the defendants.

(4) A reasonable period for the sole agency agreement to run was at least five years and accordingly, the defendants, by offering the plaintiffs a year to year contract, had evinced an intention to carry out the contracts in a way substantially inconsistent with their contractual obligations and so to deprive the plaintiffs of substantially the whole benefit of the contracts. The plaintiffs were thus entitled to treat the contract as discharged by breach.

(5) Pursuant to s 159 of the Contracts Act 1950 and having regard to the circumstances of the case as a whole, a reasonable period of notice of termination would have been six months.

(6) It is clear law in actions such as this that the normal measure of damages will be the amount that the agent might reasonably have earned under the contract had he not been prevented from continuing to act. The fact that the plaintiffs would have to pay commission to their own agents is not relevant to the assessment of damages as between the plaintiffs and the defendants.

(7) Damages of $105,176.40 were awarded to the plaintiffs with interest thereon.

[*Editorial Note*: The defendants have appealed to the Supreme Court vide Civil Appeal No 02-318-89.]

Cases referred to

1 *Papps* v *Mahon* [1966] NZLR 288 (refd)
2 *Ang Koon Kau & Anor* v *Lau Piang Ngong* [1984] 2 MLJ 277 (refd)
3 *Laws* v *London Chronicle (Indicator Newspapers)* [1959] 2 All ER 285 (refd)
4 *JK Sayani* v *Bright Brothers (P) Ltd, Bombay* (1980) Madras Law Journal 130 (refd)
5 *Quek Chek Yen* v *Majlis Daerah Kulai* [1986] 2 MLJ 290 (refd)
6 *Sohrabji Dhunjibhoy Medora* v *Oriental Government Security Life Assurance Co Ltd* (1946) 72 IA 315 (refd)
7 *Martin-Baker Aircraft Co* v *Murison* [1955] 2 All ER 722 (refd)
8 *Inchbald* v *Western Neilgherry Coffee Co* 17 CB (NS) 733; 144 ER 293 (refd)
9 *George Trollope & Sons* v *Martyn Brothers* [1934] 2 KB 436 (refd)
10 *Luxor (Eastbourne)* v *Cooper* [1941] AC 108 (refd)

Legislation referred to

Contracts Act 1950 (Rev 1974) s 159

Gan Teik Chee for the plaintiffs.
R Manecksha for the defendants.

Cur Adv Vult

Edgar Joseph Jr J: At all material times to this suit, the plaintiffs were a partnership firm carrying on, inter alia, the business of newspaper distributors and sales agents in Alor Setar in the State of Kedah while the defendants were the proprietors and publishers of a daily newspaper called '*The Star*' and a Sunday newspaper called '*The Sunday Star*'.

In March 1971, one Liew Kok Hong, the sales manager of the defendants, entered into two separate but almost identically worded agreements in writing dated 3 March 1971 being exhs P1 and P2 ('the March agreements') whereby the plaintiffs were appointed the sole agents of the defendants for the purpose of effecting sales of their newspapers aforesaid, one in respect of the states of Kedah and Perlis and the other in respect of the state of Perak, each for a period of three years but expressed to be terminable after the first year upon three months' notice in writing and upon other terms and conditions appearing therein.

However, in September 1971, the two agreements aforesaid were, by mutual consent, cancelled and replaced, by two almost identically worded agreements dated 1 September 1971 being exhs P3 and P4 ('the September agreements') in pari materia with their predecessors, except that they were each for an unspecified period and there was no provision for termination by notice.

But then, in a letter dated 26 April 1975, addressed to the plaintiffs, the defendants' solicitors referred to the March agreements and asserted that the sole agency contract was at an end having expired by effluxion of time on 3 March 1974. However, they offered to continue the sole agency on a year to year basis.

In answer to that letter, the plaintiffs replied by letter dated 2 May 1975 declining the offer and expressing the hope 'that your clients will understand our position and give us sympathetic consideration to carry on our dealings with the existing agreements'.

The defendants however adopted a hard line for, by a letter dated 31 May 1975, their solicitors replied stating that the agency agreement for three years had expired on 2 March 1974 and adding that it was not their client's intention to renew the agency agreement but, to avoid inconvenience to the plaintiffs, and to enable them to wind up their business, the defendants would continue to supply the newspapers concerned until 30 June 1975.

The defendants' solicitors followed this up with a letter dated 30 August 1975, addressed to the plaintiffs

giving formal notice that the March agreements would be terminated three months from the date thereof.

The plaintiffs then issued the writ herein claiming an injunction restraining the defendants from discontinuing the supply of the newspapers concerned to the plaintiffs under the September agreements, for damages for breach of contract and interest thereon.

Although by their defence the defendants first took the position that the September agreements were not binding on them on the ground that Mr Liew Kok Hong had no authority to enter into the agreements on their behalf, at the hearing before me, the defence confined its contention to asserting that the September agreements, even though on the face of them for an indefinite duration, were impliedly subject to termination by reasonable notice and that reasonable notice had in fact been given thereby terminating the same.

The first point taken on behalf of the defendants was that as at the date of the issue of the writ herein, namely, 23 June 1975, the plaintiffs had no cause of action because the sole agency agreement had not yet been determined. It was pointed out that termination was effected by the letter dated 30 August 1975.

Now, the expression 'a cause of action' has been defined judicially to mean 'all the facts and circumstances necessary to give rise to a right for relief in law or equity'. (See *Papps* v *Mahon*.[1])

In reply, counsel for the plaintiffs submitted, and I agree with him, that the letter dated 30 August 1975, 'was only a formal notice of termination confirming an earlier repudiation of the contract' effected by the two previous letters from the defendants to the plaintiffs dated 26 April 1975 and 31 May 1975, hereinbefore mentioned. I am satisfied, therefore, that as at the date of the issue of the writ the plaintiffs had a cause of action.

The second point taken on behalf of the defendants was a pleading point, namely, that although according to *Bullen and Leake on Precedents of Pleadings* (12th Ed), p 57, in an action for damages for breach of contract, the contract as well as the breach must be distinctly stated, the statement of claim in the present case had failed to set out that a claim was being made for damages for breach of contract.

Now, generally, a pleading point is not a good one where the omission to plead has not taken the other party by surprise. (See the Federal Court decision in *Ang Koon Kau & Anor* v *Lau Piang Ngong*.[2])

In the present case, although I am satisfied that the statement of claim was very far from being a model pleading, it was acceptable since it was obvious upon a perusal of it that the plaintiffs claim was for damages for breach of the sole agency agreement. I am further satisfied that the defendants were not put to any disadvantage at the trial by the plaintiffs' pleading, for even had the statement of claim been ideally drawn up, the evidence adduced not only on behalf of the plaintiffs but also that on behalf of the defendants would have been the same. This last point is emphasized by the fact that at no time did the defendants apply for further and better particulars of the plaintiffs' statement of claim.

The third point taken on behalf of the defendants was that the termination of the plaintiffs' sole agency agreement was lawful. It was argued that initially the defendants requested the plaintiffs to enter into fresh agreements and that it was because of the plaintiffs' refusal to do so that the defendants gave them notice of termination. It was further argued that no principal would allow his business affairs to be regulated by his agent and that when, as here, the principal feels threatened, the agency could surely be determined as the relationship involves trust and confidence which necessitate mutual satisfaction with each other's conduct.

It seems to me that the plaintiffs had considerable justification for refusing to enter into the fresh agreements proposed by the defendants. In this context I would refer to the relevant contemporary correspondence.

By a letter dated 26 April 1975 (AB p 5), the defendants' solicitors wrote to the plaintiffs as follows:

> Mr Teo Kooi Wah
> Syarikat Jaya
> No 1563 Jalan Kota
> Alor Star
>
> Dear Sir
>
> Agreement between Star Publications (M) Sdn Bhd and Teo Kooi Wah of Syarikat Jaya
>
> We are instructed to refer you to an agreement dated 3 March 1971, and to inform you formally that the contract of agency between your clients and our clients is at an end, the term having expired on 3 March 1974, but that you have been distributing papers for our clients since then without a contract.
>
> In order to regularize the relationship between your clients and ours, we are further instructed to inform you that our clients will continue your agency with our clients on a year to year basis, provided that you enter into a proper agreement with our clients.
>
> Kindly let us have a reply within one week from the date of receipt hereof.
>
> Yours faithfully
> Sd Lim Kean Siew & Co

That letter evoked the following response from the defendants by a letter dated 2 May 1975 (AB p 6) as follows:

> Lim Kean Siew & Co
> Rm 53, 5th Floor
> Bangunan Bank Negara
> Penang

Dear Sirs

Agreement between Star Publications (M) and Teo Kooi Wah of Syarikat Jaya

Your letter dated 26 April 1975 refers.

As regards the above agreement signed in 1971, I wish to point out that there is no expiry date. Perhaps it is relevant for me to relate the then conditions and the difficult situation of The Star when the agreement was entered into. The Star being newly established, had encountered many teething problems at its early stage of operations. It was difficult to obtain agents and impossible to appoint them on year to year basis. My clients had shouldered the task role of marketing and entered into the contract with the objective of establishing an efficient distribution network for The Star.

It is pleased to note that today, as a result of improved management, the sale of the newspaper has gradually increased within a few years.

Likewise, our concern for the newspaper has grown and we are working out plans to achieve even greater sales. A new agreement signed on yearly basis will lower the efficiency, the performance and the confidence of all the agents and the sub-agents and is against the interest of the newspaper in the long run.

Also I wish to draw your attention to clause no 13 of the above-mentioned agreement which provides certain conditions sufficient for your clients to exert control on our performance.

In the light of the foregoing, I sincerely hope that your clients will understand our position and give us your sympathetic consideration to carry on our dealings with the existing agreement. We hope we could maintain the close cooperation and the good relationship which we have enjoyed with your clients for mutual benefit.

Yours faithfully,
sgd Teo Kooi Wah

cc Star Publications (M) Sdn Bhd

At the trial, the plaintiffs adduced evidence to show why a year to year contract, such as that offered by the defendants to the plaintiffs, would have been substantially inconsistent with the obligations incurred under the September agreements so as to deprive the plaintiffs of virtually the whole benefit of the contract thus bringing themselves within the principles enunciated in *Laws* v *London Chronicle (Indicator Newspapers)*.[3] In particular, evidence was adduced to show that in reliance upon the expectation encouraged by the defendants that the sole agency agreement was to be for an unlimited period, the plaintiffs had, from inception, ploughed much capital and effort, especially during the early years, to establish an efficient distribution network and a viable market for newspapers which were entirely new to the reading public in the regions concerned.

I do not propose to delve into the relevant testimony as to these matters. Suffice it to say that I find the same to be both reasonable and probable and I have therefore no hesitation in accepting the same as true.

That being my view of the evidence, the question which arises for decision regarding this part of the case is: what is the period for which the sole agency agreement was to run? This question is not free from difficulty.

Teo Kooi Wah (PW1), the manager of the plaintiffs, testified, when asked to explain the deletion of the words 'for the period of three years from date hereof' in cl 1 of P2, that the deletion was made by the defendants' manager KK Liew shortly before the commencement of the publication of the newspaper. He added that this came about as a result of his asking Liew for an agency period of ten years instead of three years. Liew agreed to this and went further to say that if the defendants did their work properly they could have an agency for as long as they liked. It was in these circumstances that Liew made the deletion concerned — so he said. Similarly, Teo testified that the corresponding amendments appearing in P1 were made at the same time by Liew and for the same reason. He further explained that it was the amendments made to the March agreements P1 and P2 which gave them an untidy appearance. The September agreements (P3 and P4) were typed out by Liew's niece, a Miss Ang Boon Ee, and these incorporated the amendments concerned. It was, of course, Miss Ang who witnessed Liew's signature.

In these circumstances, counsel for the plaintiffs submitted that a reasonable period for the sole agency agreement considering the circumstances would be from seven to ten years. Counsel for the defendants does not appear to have addressed this question.

For my part, doing the best I can, I consider that a reasonable period for the sole agency agreement was at least five years and I so hold.

It follows that by offering the plaintiffs a year to year contract, the defendants had evinced an intention to carry out the contracts in a way substantially inconsistent with their contractual obligations and so to deprive the plaintiffs of substantially the whole benefit of the contracts concerned. (See *Laws*' case.[3]) The plaintiffs were thus entitled to treat the contract as discharged by breach and to issue the writ herein.

The next question which arises for decision is what was the required period of notice of termination for the September agreements. My attention was directed to s 159 of the Contracts Act 1950 (Rev 1974) which provides that reasonable notice must be given of revocation or renunciation of the agency agreement, otherwise the damage thereby resulting to the agent must be made good.

Counsel for the defendants submitted that three or six months' notice of termination would be sufficient and cited in support *JK Sayani* v *Bright Brothers (P) Ltd, Bombay*[4] and *Quek Chek Yen* v *Majlis Daerah Kulai*.[5]

On the other hand, counsel for the plaintiffs submitted that the minimum period of notice of termination

should be one year and cited in support *Sohrabji Dhunjibhoy Medora* v *Oriental Government Security Life Assurance Co Ltd*[6] and *Martin-Baker Aircraft Co* v *Murison*.[7]

In my opinion, having regard to the circumstances of the case as a whole, not forgetting the expedition and time spent by the plaintiffs and the desirability of a period of adjustment of business (see *Bowstead on Agency* (15th Ed) p 529) which I have referred to and discussed, counsel for the defendants is correct insofar as this part of the case is concerned, and I would accordingly uphold his submission that a reasonable period of notice of termination would have been six months.

I must next consider the measure of damages to which the plaintiffs are entitled. In actions such as the present one, it is clear law that the normal measure of damages will be the amount that the agent might reasonably have earned under the contract had he not been prevented from continuing to act. (See, for example, *Inchbald* v *Western Neilgherry Coffee Co*[8] and *George Trollope & Sons* v *Martyn Brothers*,[9] which although generally discredited on the issue of liability in view of their treatment by the House of Lords in *Luxor (Eastbourne)* v *Cooper*,[10] are still illustrative on the question of damages.)

It is with the above principles in mind that I turn to examine the evidence relevant to the issue of the measure of damages.

It was alleged by counsel for the plaintiffs, and not challenged by counsel for the defendants, that the statement of accounts, being P19 and P19A, disclosed that during the first 11 months of the year 1975, the plaintiffs did earn a net commission of $96,411.87. Counsel for the plaintiffs also directed my attention to the June 1976 and the 1977-1980 annual reports of the defendants themselves as supporting this aspect of the plaintiffs' claims.

Counsel for the defendants did not attempt to contest the figures appearing in the contemporary documents relied on by counsel for the plaintiffs but he did take the point that the plaintiffs' claims were really for special and not general damages and as such, ought to have been, but were not specifically pleaded. He also took the point that the sum claimed by the plaintiffs did not take into account the commissions the plaintiffs would have had to pay to their own agents.

Now in claims of the present kind, the assessment of damages is often not free from difficulty and it is not easy to give particulars as there is a strong element of contingencies involved in quantification. Accordingly, it is simpler to put the claim generally, leaving it to the defendant, if he thinks fit, to apply for particulars; though ideally, it would be better, whenever possible, to formulate the claim with particulars; however tentative. In the commercial court in the United Kingdom, particulars in cases of this sort have been ordered to be delivered; in which case they should then be stated in the form of an estimate (See p 31 footnote, *Atkin's Court Forms* (2nd Ed) Vol 4.)

As for counsel for the defendants' next point, I do not consider the fact that the plaintiffs would have to pay commission to their own agents relevant to the question of the assessment of damages as between the plaintiffs and the defendants. In my opinion, any question which may arise as to the payment of commission by the plaintiffs to their own agents would have to form the subject of separate proceedings between them.

I must now determine the appropriate sum to award to the plaintiffs. Having regard to my findings that the reasonable period for the sole agency agreement was five years (of which the unexpired term was only one year) and that a reasonable period of notice of termination of the same was six months, the award for damages should be $105,176.40 ($105,176.40 x 1 1/2 less 1/3, to take into account contingencies) and I so order.

The judgment sum will attract interest at the rate of 8% pa from date of accrual of cause of action to date of judgment pursuant to the provisions of s 11 of the Civil Law Act 1956, and thereafter, at the rate of 8% pa to the date of realization pursuant to O 42 r 12 of the Rules of the High Court 1980. The defendants must also pay to the plaintiffs the costs of the action.

Order accordingly.

Solicitors: *Gan Teik Chee & Ho*; *Lim Kean Siew & Co.*

Reported by *Michelle Rasanayagam*